

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JOHN J. MAHONEY,

*Plaintiff,*

v.

DAVID J. RUSHFORD, in his Capacity as  
CLERK OF THE CITY OF WORCESTER,

*Defendant.*

Civil Action No.:

**VERIFIED COMPLAINT**

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**A. Nature of the Action**

1. This matter is an as-applied challenge to restrictions imposed by the Clerk of the City of Worcester restricting campaigning activities near polling locations in Worcester. The Plaintiff is a candidate running for state representative on a sticker campaign.

**B. Jurisdiction**

2. This Court has subject matter jurisdiction over this action under 28 U.S.C. §1331, because the matter in controversy arises under the Constitution and laws of the United States and under 28 U.S.C. §1343(3) and §1343(4) because injunctive relief is sought to redress the deprivation under the color of state law of rights and privileges and immunities secured by the Constitution and Acts of Congress protecting Equal Rights.

3. Venue in this Court is proper under 28 U.S.C. §1391 because the events giving rise to this claim occurred, and will occur, in the District of Massachusetts.

**C. Parties**

4. Plaintiff John J. Mahoney is an announced sticker candidate for State Representative. Mr. Mahoney resides at 138 Newton Street North, Worcester, Massachusetts.

5. Defendant David J. Rushford, is the Clerk of the City of Worcester. Mr. Rushford is sued in his official capacity only. The office of the Worcester City Clerk is located at City Hall, 455 Main Street Worcester, Massachusetts.

**D. Facts common to all counts**

6. Plaintiff John J. Mahoney is a candidate for the position of State Representative for the Thirteenth Worcester District.

7. Mr. Mahoney has notified the Worcester Clerk's office that his is running a sticker campaign.

8. Mr. Mahoney intends to distribute stickers at polling places around Worcester, including at polling places at Temple Emanuel, Assumption College, and Jewish Healthcare Center. He will identify the location of these sticker distribution sites through signs.

9. The Clerk of the City of Worcester has marked locations at each polling place where distribution of stickers and campaigning will be permitted.

10. The Clerk has designate only one location at each polling place where distribution of stickers and campaigning will be permitted.

11. The Clerk has informed my campaign that at the Temple Emanuel polling place the Clerk will only permit at one location and that distribution of stickers will not be permitted at the other avenues of approach to the polling place.

12. The Clerk has informed my campaign that the only place where distribution of stickers and campaigning will be permitted at the Assumption College polling place is at a location approximately 750 to 1,000 feet from the entrance to the polling place and across Salisbury Street.

13. The Clerk has informed my campaign that the only place where distribution of stickers and campaigning will be permitted at the Jewish Healthcare Center polling place is at a location approximately 1,000 feet from the entrance to the polling place.

14. The Clerk has informed my campaign that voters wishing stickers will need to obtain them from the side of road on Salisbury Street.

**Count I**  
**42 U.S.C. §1983**  
**Violation of the First Amendment to the Constitution of the United States**

15. The actions of the Clerk of the City of Worcester violate the First Amendment to the Constitution of the United State by restricting political speech in a manner that not narrowly tailored to achieve a compelling governmental interest.

**Count II**  
**Declaratory relief under 28 U.S.C. §§2201 and 2202**

16. It is the Plaintiff's intention to remain active in future campaigns including seeking to campaign near polling places within the City of Worcester.

17. The actions of the Clerk of the City of Worcester will continue to violate the First Amendment to the Constitution of the United State by restricting political speech in a manner that not narrowly tailored to achieve a compelling governmental interest.

**Wherefore,** Plaintiff John J. Mahoney demands judgment:

- A. That this Court temporarily restrain and permanently enjoin the Defendant, his agents, servants, attorneys, employees or other persons under their control from interfering with the orderly distribution of candidate stickers at any location greater than 150 feet from the entrance of polling places within the City of Worcester; and
- B. That this Court temporarily restrain and permanently enjoin the Defendant, his agents, servants, attorneys, employees or other persons under their control from interfering with the orderly display of campaign signs or distribution of campaign literature at location that are greater then 150 feet from the entrance of polling places within the City of Worcester; and
- C. This Court declare that the defendants violated the constitutional rights of the plaintiffs under color of law in violation of 42 U.S.C. §1983; and
- D. This Court award attorneys' fees and costs pursuant to 42 U.S.C. §1988 and any other applicable authority; and
- E. That the Court grants such other relief as it may deem just and proper.

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**VERIFICATION**

I, John J. Mahoney, the plaintiff in this action, hereby state that I have read the forgoing verified complaint and have personal knowledge of the content thereof and that the same is true of my knowledge, except as to matters therein stated to be on information and belief and as to those matters I believes it to be true.

Signed under the pains and penalties of perjury this 3<sup>rd</sup> day of November, 2008.

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/s/ John J. Mahoney  
John J. Mahoney

Dated: November 2, 2008

Respectfully Submitted,

**John J. Mahoney,**

by his attorney,

/s/ Michael Williams

Michael J. McDevitt (BBO# 564720)

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